

same meaning as the term “small-business concern” under the Small Business Act.²³ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁴ Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.²⁵

1. Wireline Carriers and Service Providers

9. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁶ According to Census Bureau data for 2007, there were a total of 3,188 firms in this category, that operated for the entire year.²⁷ Of this total, 3,144 firms employed 999 or fewer employees, and 44 firms employed 1000 employees or more.²⁸ Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to the Notice.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.³⁰ Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.³¹ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

11. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² According to Commission data, 1,307 carriers reported that they were incumbent local

²³ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁴ See 15 U.S.C. § 632.

²⁵ See SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://www.sba.gov/advo/stats/sbfaq.pdf>.

²⁶ 13 C.F.R. § 121.201, NAICS code 517110.

²⁷ U.S. Census Bureau, 2007 Economic Census Report, Subject Series: Information, Sector 51, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS,” at NAICS Code 174, available at http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-ds_name=EC0751SSSZ2&-_lang=en (2007 Economic Census Report Employment Size of Firms).

²⁸ See *id.*

²⁹ 13 C.F.R. § 121.201, NAICS code 517110.

³⁰ See Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010), available at <http://www.fcc.gov/reports/trends-telephony-service-2010> (Trends in Telephone Service).

³¹ See *id.*

³² See 13 C.F.R. § 121.201, NAICS code 517110.

exchange service providers.³³ Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.³⁴ Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³⁵ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³⁶ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁷ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.³⁸ Of these carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.³⁹ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴⁰ In addition, 72 carriers have reported that they are Other Local Service Providers.⁴¹ Of these 72 carriers, an estimated 70 have 1,500 or fewer employees and two have more than 1,500 employees.⁴² Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴³ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of

³³ See Trends in Telephone Service at Table 5.3.

³⁴ See *id.*

³⁵ 5 U.S.C. § 601(3).

³⁶ See Letter from Jere W. Glover, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

³⁷ See 13 C.F.R. § 121.201, NAICS code 517110.

³⁸ See Trends in Telephone Service at Table 5.3.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

⁴³ See 13 C.F.R. § 121.201, NAICS code 517110.

interexchange services.⁴⁴ Of these companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

15. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The closest applicable size standard under SBA rules is for Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁶ According to Commission data, 193 providers have reported that they are engaged in the provision of prepaid calling cards.⁴⁷ Of these providers, an estimated 193, or all such providers, have 1,500 or fewer employees and none have more than 1,500 employees.⁴⁸ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

16. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁹ According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵⁰ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵¹ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

17. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵² According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵³ Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.⁵⁴ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Notice.

18. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁵ According to Commission data,⁵⁶ 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently,

⁴⁴ See Trends in Telephone Service at Table 5.3.

⁴⁵ See *id.*

⁴⁶ See 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁷ See Trends in Telephone Service at Table 5.3.

⁴⁸ See *id.*

⁴⁹ See 13 C.F.R. § 121.201, NAICS code 517911.

⁵⁰ See Trends in Telephone Service at Table 5.3.

⁵¹ See *id.*

⁵² See 13 C.F.R. § 121.201, NAICS code 517911.

⁵³ See Trends in Telephone Service at Table 5.3.

⁵⁴ See *id.*

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁶ See Trends in Telephone Service at Table 5.3.

the Commission estimates that the majority of payphone service providers are small entities that may be affected by rules adopted pursuant to the Notice.

19. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁷ According to Commission data,⁵⁸ 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Notice.

20. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁹ According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁶⁰ Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.⁶¹ Consequently, the Commission estimates that the majority of Other Toll Carriers are small entities that may be affected by the rules adopted pursuant to the Notice.

21. *800 and 800-Like Service Subscribers.*⁶² Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll-free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶³ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁶⁴ According to this data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.⁶⁵ We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll-free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

⁵⁷ See 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁸ See Trends in Telephone Service at Table 5.3.

⁵⁹ See 13 C.F.R. § 121.201, NAICS code 517110.

⁶⁰ See Trends in Telephone Service at Table 5.3.

⁶¹ See *id.*

⁶² We include all toll-free number subscribers in this category, including those for 888 numbers.

⁶³ See 13 C.F.R. § 121.201, NAICS code 517911.

⁶⁴ See Trends in Telephone Service at Tables 18.7-18.10.

⁶⁵ See *id.*

2. Wireless Telecommunications Service Providers

22. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.⁶⁶ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁶⁷ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁶⁸ For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.⁶⁹ Of this total, 1,368 firms employed 999 or fewer employees and 15 employed 1000 employees or more.⁷⁰ Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁷¹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁷² Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small entities that may be affected by the rules adopted pursuant to the Notice.

23. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷³ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁴ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁷⁵ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷⁶ In 1999, the Commission re-

⁶⁶ See 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁷ U.S. Census Bureau, 2002 NAICS Definitions, “517211 – Paging,” available at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 – Cellular and Other Wireless Telecommunications,” available at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁶⁸ 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁶⁹ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

⁷⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

⁷¹ See Trends in Telephone Service at Table 5.3.

⁷² See *id.*

⁷³ See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

⁷⁴ See *id.*; see also 47 C.F.R. § 24.720(b)(2).

⁷⁵ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

⁷⁶ See FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications* (continued...)

auctioned 347 C, E, and F Block licenses.⁷⁷ There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.⁷⁸ Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.⁷⁹ Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.⁸⁰ Of the 14 winning bidders, six were designated entities.⁸¹ In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.⁸²

24. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁸³ This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.⁸⁴ Four winning bidders that identified themselves as very small businesses won 17 licenses.⁸⁵ Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won two licenses.

25. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues

(Continued from previous page)

Services (PCS) Licensees, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

⁷⁷ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (Wireless Tel. Bur. 1999).

⁷⁸ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (Wireless Tel. Bur. 2001).

⁷⁹ See *Broadband PCS Spectrum Auction Closes, Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (Wireless Tel. Bur. 2005).

⁸⁰ See *Auction of Broadband PCS Spectrum Licenses Closes Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (Wireless Tel. Bur. 2007).

⁸¹ *Id.*

⁸² See *Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 78*, Public Notice, 23 FCC Rcd 7496 (Wireless Tel. Bur. 2008).

⁸³ *Id.* Auction 78 also included an auction of Broadband PCS licenses.

⁸⁴ *Id.* at 7521–22.

⁸⁵ See *Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78*, , Public Notice, 23 FCC Rcd 12749 (Wireless Tel. Bur. 2008).

for the prior three calendar years of \$40 million or less.⁸⁶ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁸⁷ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁸⁸ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁸⁹ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁹⁰ The SBA has approved these small business size standards.⁹¹ A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁹² Three of these claimed status as a small or very small entity and won 311 licenses.

26. *Paging (Private and Common Carrier)*. In the *Paging Third Report and Order*, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹³ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards.⁹⁴ According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.⁹⁵ Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.⁹⁶ Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by rules adopted pursuant to the Notice. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.⁹⁷ Fifty-seven companies claiming small

⁸⁶ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, PP Docket No. 93-253, GEN Docket No. 90-314, ET Docket No. 92-100, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁸⁷ *See Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787*, Public Notice, (rel. Nov. 9, 1994).

⁸⁸ *Amendment of the Commission’s Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (*Narrowband PCS Second Report and Order*).

⁸⁹ *Id.* at 10476, para. 40.

⁹⁰ *Id.*

⁹¹ *See Letter from Aida Alvarez, SBA, to Amy Zoslov, Wireless Telecommunications Bureau, FCC* (dated Dec. 2, 1998) (*1998 Alvarez Letter*).

⁹² *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (Wireless Tel. Bur. 2001).

⁹³ *See Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 100030, 10085-88, paras. 98-107 (1999) (*Paging Third Report and Order*).

⁹⁴ *See 1998 Alvarez Letter*.

⁹⁵ *See Trends in Telephone Service* at Table 5.3.

⁹⁶ *See id.*

⁹⁷ *See 929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (2000).

business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁹⁸ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁹⁹ A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.¹⁰⁰

27. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.¹⁰¹ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Notice.

28. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁰² This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.¹⁰³ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.¹⁰⁴ The SBA has approved these small business size standards.¹⁰⁵ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹⁰⁶ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The

⁹⁸ See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (2002).

⁹⁹ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

¹⁰⁰ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 25 FCC Rcd 18164 (2010).

¹⁰¹ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁰² See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

¹⁰³ See *id.* at 11068–69, para. 291.

¹⁰⁴ See *id.* at 11068–70, paras. 291–95.

¹⁰⁵ See Letter from Aida Alvarez, SBA to D. Phythyon, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998) (*Alvarez to Phythyon 1998 Letter*).

¹⁰⁶ See *Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

second auction included 225 licenses: 216 EA licenses and nine EAG licenses. Fourteen companies claiming small business status won 158 licenses.¹⁰⁷

29. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.¹⁰⁸ The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.¹⁰⁹ The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.¹¹⁰ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.¹¹¹ Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.¹¹² The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.¹¹³ A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.¹¹⁴

30. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.¹¹⁵ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹¹⁶ Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

31. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.¹¹⁷ We assume, for purposes of this analysis, that all of the remaining existing

¹⁰⁷ See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

¹⁰⁸ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹⁰⁹ *Id.*

¹¹⁰ See Letter from Aida Alvarez, SBA, to Thomas Sugrue, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*1999 Alvarez Letter*).

¹¹¹ *FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996*, Public Notice, 11 FCC Rcd 18599 (Wireless Tel. Bur. 1996).

¹¹² *Id.*

¹¹³ See *Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas'*, Public Notice, 11 FCC Rcd 18637 (Wireless Tel. Bur. 1996).

¹¹⁴ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (Wireless Tel. Bur. 2002).

¹¹⁵ See *800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (Wireless Tel. Bur. 2000).

¹¹⁶ See *800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (Wireless Tel. Bur. 2000).

¹¹⁷ See generally 13 C.F.R. § 121.201, NAICS code 517210.

extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

32. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”)).¹¹⁸ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹¹⁹ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹²⁰ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid.¹²¹ In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.¹²² Auction 86 concluded with ten bidders winning 61 licenses.¹²³ Of the ten, two bidders claimed small business status and won four licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

33. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are

¹¹⁸ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹¹⁹ 47 C.F.R. § 21.961(b)(1).

¹²⁰ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

¹²¹ 47 C.F.R. § 27.1218. *See also Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277, 8296 (2009)(*Auction 86 Procedures Public Notice*).

¹²² *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8280.

¹²³ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (Wireless Tel. Bur. 2009).

held by educational institutions. Educational institutions are included in this analysis as small entities.¹²⁴ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹²⁵ The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.¹²⁶ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.¹²⁷ Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to the Notice.

34. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹²⁸ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹²⁹ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹³⁰ Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹³¹ The SBA approved these small size standards.¹³² The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.¹³³ Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.¹³⁴ The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: Five EAG licenses and 476 Cellular Market Area

¹²⁴ The term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)–(6). We do not collect annual revenue data on EBS licensees.

¹²⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517110 – Wired Telecommunications Carriers” (partial definition); available at <http://www.census.gov/eos/naics/2007/def/ND517110,HTM#N517110>.

¹²⁶ U.S. Census Bureau, 2007 Economic Census, Subject Series; Information, Table 5, Employment size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

¹²⁷ See *id.*

¹²⁸ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52–59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52–59 Report and Order*).

¹²⁹ See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087–88, para. 172.

¹³⁰ See *id.*

¹³¹ See *id.* at 1088, para. 173.

¹³² See 1999 Alvarez Letter.

¹³³ See *Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (Wireless Tel. Bur. 2002).

¹³⁴ *Id.*

licenses.¹³⁵ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹³⁶ In 2005, the Commission completed an auction of five licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.¹³⁷

35. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹³⁸ The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.¹³⁹ An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.¹⁴⁰ Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.¹⁴¹

36. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.¹⁴² In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.¹⁴³ Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).¹⁴⁴

¹³⁵ See *Lower 700 MHz Band Auction Closes*, Public Notice, 18 FCC Rcd 11873 (Wireless Tel. Bur. 2003).

¹³⁶ See *id.*

¹³⁷ *Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60*, Public Notice, 20 FCC Rcd 13424 (Wireless Tel. Bur. 2005).

¹³⁸ *Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, CC Docket No. 94-102, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

¹³⁹ *Id.*

¹⁴⁰ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (Wireless Tel. Bur. 2008) (*700 MHz Band Auction Closes Public Notice*).

¹⁴¹ See *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92, Down Payments and FCC Forms 601 and 602 Due August 11, 2011, Final Payments Due August 25, 2011, Ten-Day Petition to Deny Period*, Public Notice, 26 FCC Rcd 10494 (Wireless Tel. Bur. 2011).

¹⁴² See *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

¹⁴³ See *700 MHz Band Auction Closes Public Notice at 4572*.

¹⁴⁴ *Id.*

37. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁴⁵ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁴⁶ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁴⁷ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.¹⁴⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁴⁹

38. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.¹⁵⁰ Bidding credits for designated entities were not available in Auction 77.¹⁵¹ In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.¹⁵²

39. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.¹⁵³ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.¹⁵⁴

¹⁴⁵ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*700 MHz Guard Band Order*).

¹⁴⁶ See *id.* at 5343-45, paras. 106-10.

¹⁴⁷ See *id.*

¹⁴⁸ See *700 MHz Guard Band Auction Closes, Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (Wireless Tel. Bur. 2000).

¹⁴⁹ See *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (Wireless Tel. Bur. 2001).

¹⁵⁰ See *Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77*, Public Notice, 23 FCC Rcd 6670 (Wireless Tel. Bur. 2008).

¹⁵¹ *Id.* at 6685.

¹⁵² See *Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77*, Public Notice, 23 FCC Rcd 9501 (Wireless Tel. Bur. 2008).

¹⁵³ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵⁴ See generally 13 C.F.R. § 121.201.

40. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

41. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁵⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).¹⁵⁶ In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹⁵⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by rules proposed in the Notice.

42. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.¹⁵⁸ We will use SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹⁵⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Notice.

43. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁶⁰ Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁶¹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars.¹⁶² In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross

¹⁵⁵ The service is defined in 47 C.F.R. § 22.99.

¹⁵⁶ BETRS is defined in 47 C.F.R. §§ 22.757 and 22.759.

¹⁵⁷ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵⁸ See 47 C.F.R. § 22.99.

¹⁵⁹ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶⁰ See *id.*

¹⁶¹ 2007 Economic Census Report Employment Size of Firms, at NAICS Code 517210.

¹⁶² See generally *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

revenues for the preceding three years not to exceed \$3 million dollars.¹⁶³ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Notice.

44. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁶⁴ private operational-fixed,¹⁶⁵ and broadcast auxiliary radio services.¹⁶⁶ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁶⁷ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by rules adopted pursuant to the Notice. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

45. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁶⁸ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for Cellular and Other Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁶⁹ Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁷⁰ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

46. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous

¹⁶³ See *id.*

¹⁶⁴ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁶⁵ Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

¹⁶⁶ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

¹⁶⁷ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁶⁸ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001–1037, NAICS code 517210.

¹⁶⁹ See *id.*

¹⁷⁰ 2007 Economic Census Report Employment Size of Firms, at NAICS Code 517210.

calendar years.¹⁷¹ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁷² The SBA has approved these small business size standards.¹⁷³ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Notice.

47. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁷⁴ The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁷⁵ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁷⁶ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁷⁷ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

48. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁷⁸ In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹⁷⁹ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an

¹⁷¹ See *Amendment of the Commission’s Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661–64, paras. 149–51 (1997).

¹⁷² See *id.*

¹⁷³ See Letter from Aida Alvarez, SBA to Kathleen O’Brien Ham, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Feb. 4, 1998).

¹⁷⁴ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997) (*LMDS Second Report and Order*).

¹⁷⁵ See *id.* at 12689–90, para. 348.

¹⁷⁶ See *id.*

¹⁷⁷ See *1998 Alvarez to Phythyon Letter*.

¹⁷⁸ See *generally Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹⁷⁹ See *generally Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218–219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (*218–219 MHz Report and Order and Memorandum Opinion and Order*).

entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹⁸⁰ These size standards will be used in future auctions of 218–219 MHz spectrum.

49. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹⁸¹ The SBA has approved these definitions.¹⁸² The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

50. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

51. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz).¹⁸³ As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

52. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard of “Cellular and Other Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.¹⁸⁴ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹⁸⁵ and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

53. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for “small business” is an entity that, together with controlling interests and affiliates, has

¹⁸⁰ *See id.*

¹⁸¹ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

¹⁸² *See 1998 Alvarez Letter.*

¹⁸³ The service is defined in section 90.1301 *et seq.* of the Commission’s rules, 47 C.F.R. §1301 *et seq.*

¹⁸⁴ *See* 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸⁵ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

average annual gross revenues for the three preceding years not in excess of \$15 million.¹⁸⁶ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁸⁷ The SBA has approved these small business size standards.¹⁸⁸ These size standards will apply to a future 24 GHz license auction, if held.

3. International Service Providers

54. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.¹⁸⁹ The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.¹⁹⁰ Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.¹⁹¹

55. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹⁹² For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.¹⁹³ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.¹⁹⁴ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Notice.

56. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”¹⁹⁵ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.¹⁹⁶ Of

¹⁸⁶ See *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) (*24 GHz Amendment Order*); see also 47 C.F.R. § 101.538(a)(2).

¹⁸⁷ See *24 GHz Amendment Order*, 15 FCC Rcd at 16967 para. 77; see also 47 C.F.R. § 101.538(a)(1).

¹⁸⁸ See Letter from Gary M. Jackson, SBA to Margaret W. Wiener, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated July 28, 2000).

¹⁸⁹ See 13 C.F.R. § 121.201, NAICS code 517410.

¹⁹⁰ *Id.*

¹⁹¹ See 13 C.F.R. § 121.201, NAICS code 517919.

¹⁹² U.S. Census Bureau, 2007 NAICS Definitions, “517410 – Satellite Telecommunications.”

¹⁹³ See 13 C.F.R. § 121.201, NAICS code 517410.

¹⁹⁴ See *id.* An additional 38 firms had annual receipts of \$25 million or more.

¹⁹⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications,” available at <http://www.census.gov/naics/2007/def/ND517919.HTM>.

¹⁹⁶ See 13 C.F.R. § 121.201, NAICS code 517919.

this total, 2,346 firms had annual receipts of under \$25 million.¹⁹⁷ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

4. Cable and OVS Operators

57. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹⁹⁸ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁹⁹ According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.²⁰⁰ Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1000 employees or more.²⁰¹ Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Notice.

58. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.²⁰² Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard.²⁰³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁰⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁰⁵ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁰⁶ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers. Thus, under this second size standard, most cable systems have 10,000 – 19,999

¹⁹⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

¹⁹⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) available at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁹⁹ See 13 C.F.R. § 121.201, NAICS code 517110.

²⁰⁰ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

²⁰¹ See *id.*

²⁰² See 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

²⁰³ These data are derived from R.R. Bowker, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pgs. A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pgs. D-1805 to D-1857.

²⁰⁴ See 47 C.F.R. § 76.901(c).

²⁰⁵ These data are derived from R.R. Bowker, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pgs. A-8 & C-2 (data current as of Jun. 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pgs. D-1805 - D-1857.

²⁰⁶ See 47 C.F.R. § 76.901(c).

subscribers.²⁰⁷ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice.

59. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²⁰⁸ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁰⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²¹⁰ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²¹¹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

60. *Open Video Services.* The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²¹² The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²¹³ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²¹⁴ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.²¹⁵ Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1000 employees or more.²¹⁶ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, we note that the Commission has certified some OVS

²⁰⁷ WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pg. F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

²⁰⁸ 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn. 1-3.

²⁰⁹ 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Serv. Bur. 2001).

²¹⁰ These data are derived from R.R. Bowker, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pgs. A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pgs. D-1805 - D-1857.

²¹¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules.

²¹² 47 U.S.C. § 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606 para. 135 (2009) (*Thirteenth Annual Cable Competition Report*).

²¹³ *See* 47 U.S.C. § 573.

²¹⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) available at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²¹⁵ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

²¹⁶ *See id.*

operators, with some now providing service.²¹⁷ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²¹⁸ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

5. Internet Service Providers

61. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”²¹⁹ The SBA has developed a small business size standard of 1,500 or fewer employees.²²⁰ According to Census Bureau data from 2007, there were 3,188 firms in this category, total, that operated for the entire year.²²¹ Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.²²² Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to this Notice.

6. Other Internet-Related Entities

62. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).”²²³ The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees.²²⁴ According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.²²⁵ Of this total, 2,682 firms employed 499 or fewer employees, and 23 firms employed 500 employees or

²¹⁷ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

²¹⁸ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²¹⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) available at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²²⁰ 13 C.F.R. § 121.201, NAICS code 517110.

²²¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007, NAICS Code 517919” (issued Nov. 2010).

²²² See *id.*

²²³ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Employment Size of Firms for the United States: 2007”, NAICS code 517110 (issued Nov. 2010).

²²⁴ See *id.*

²²⁵ U.S. Census Bureau, 2007 NAICS Definitions, “519130 Internet Publishing and Broadcasting and Web Search Portals,” available at <http://www.naics.com/censusfiles/ND519130.HTM>.

more.²²⁶ Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

63. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”²²⁷ The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts.²²⁸ According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.²²⁹ Of these, 7,744 had annual receipts of under \$24,999,999.²³⁰ Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

64. *All Other Information Services.* The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).”²³¹ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts.²³² According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.²³³ Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

7. Other Entities

65. *Responsible Organizations (RespOrgs).* Toll-free numbers are assigned on a first-come, first-served basis by entities referred to as “Responsible Organizations” or “RespOrgs.” These entities, which may or may not be telephone companies, have access to the SMS/800 database, which contains information regarding the status of all toll-free numbers. RespOrgs are certified by the SMS/800 database administrator, which manages toll-free service.²³⁴ Most RespOrgs are telephone carriers or companies. Other companies that apply for RespOrg status are enhanced voice mail providers, VoIP carriers, call tracking and marketing analytics firms, or vanity number firms. Neither the Commission nor the SBA has developed a small business size standard specifically for RespOrgs. There are 404 RespOrgs certified

²²⁶ See 13 C.F.R. § 121.201, NAICS code 519130.

²²⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007”, NAICS code 519130” (issued Nov. 2010).

²²⁸ *Id.*

²²⁹ U.S. Census Bureau, 2007 NAICS Definitions, “518210 Data Processing, Hosting, and Related Services,” available at <http://www.naics.com/2007/def/NDEF518.HTM>.

²³⁰ See 13 C.F.R. § 121.201, NAICS code 518210.

²³¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007”, NAICS code 519130” (issued Nov. 2010).

²³² *Id.*

²³³ U.S. Census Bureau, 2007 NAICS Definitions, “519190 All Other Information Services,” available at <http://www.census.gov/naics/2007/def/ND519190.HTM>.

²³⁴ FCC Fact Sheet, “What is a Toll-Free Number,” available at <http://www.fcc.gov/cgb/consumerfacts/tollfree.html>.

by SMS/800.²³⁵ Consequently, we estimate that there are not more than 404 RespOrgs that are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

66. The transition to a simplified contribution system could affect all telecommunications providers, including small entities, and may include new administrative processes. The Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all telecommunications providers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of such costs or burdens.

67. *Apportioning Revenues from Bundled Services.* Under the current Fund contribution system, revenues from telecommunications offerings are subject to contribution assessment while revenues from information services and consumer-premises equipment (CPE) are excluded from the contribution base. A telecommunications provider must therefore apportion its revenues between telecommunications and non-telecommunications sources for purposes of contribution assessment. Telecommunications providers can currently apportion their bundled revenues pursuant to two safe harbor methods established by the Commission. In addition to the safe harbors, a telecommunications provider could apportion its bundled revenues using any reasonable alternative method. In the Notice, we seek comment on ways to simplify the apportionment of bundled offerings.²³⁶ We seek comment on a bright-line rule that codifies a modified version of the two safe harbors.²³⁷ If adopted, this change would affect how telecommunications providers apportion and report revenues from bundled services.

68. *Contributions for Services with an Interstate Telecommunications Component.* We seek comment on what revenues should be assessed to the extent we choose to exercise our permissive authority over services that provide interstate telecommunications.²³⁸ We seek comment on whether we could and should require contributions on the full retail revenues of an information service that provides interstate telecommunications. We also seek comment on whether to assess only the telecommunications (i.e., the transmission) component and, if so, how we would determine what portion of the integrated service revenues should be associated with the transmission component. We also ask whether we should craft a rule, or safe harbor, that provides for assessment of a certain percentage of retail revenues of information services with a telecommunications (transmission) component. If adopted, this change would affect all providers of services that contain an interstate telecommunications component.

69. *Allocating Revenues Between Inter- and Intrastate Jurisdictions.* We also seek comment on whether the Act compels us to only assess a portion of revenues associated with services that operate interstate, intrastate, or internationally. In the Notice, we seek comment on whether to (1) adopt a rule that requires all providers subject to contributions to report and contribute on all revenues derived from assessable services rather than require providers to allocate revenues between the interstate and intrastate jurisdictions; (2) adopt a bright line rule for how companies should allocate revenues between jurisdictions for broad categories of services; or (3) find that for USF contribution purposes, revenues from such services should be reported as 100 percent interstate. If adopted, this change would affect how telecommunications providers allocate and report mixed jurisdiction revenues.

²³⁵ See SMS/800 website, <http://www.sms800.com> (listing RespOrgs).

²³⁶ See *supra* Section V.A.1 (Apportioning Revenues from Bundled Services), paras. 101 – 113.

²³⁷ *Id.* at para. 106.

²³⁸ See *supra* Section V.A.1 (Apportioning Revenues from Bundled Services), paras. 101 – 113.

70. *Contribution Obligations of Wholesalers and Their Customers.* We seek comment on modifying the existing Fund contribution methodology to assess value-added revenues rather than end-user revenues.²³⁹ Under a value-added approach, each telecommunications provider in a service chain would contribute based on the value it “adds” to the service. Alternatively, we seek comment on whether we should mandate greater specificity in contributor certifications to their wholesalers. If adopted, this change would affect how revenues are reported.

71. *Reporting Prepaid Calling Card Revenues.* In the Notice, we seek comment on adopting a rule to require prepaid calling card providers to report and contribute on all end-user revenues, and who should be deemed the end user for purposes of such a rule.²⁴⁰ We seek comment on rules standardizing the reporting of prepaid calling card revenues. We propose rules requiring all telecommunications providers (as well as telecommunications carriers) to register with the Commission, and rules requiring entities that provide telecommunications to others for resale to check the registration status of the their customers.²⁴¹ We believe these rules will provide reporting entities with enhanced certainty regarding their contributions obligations. If adopted, this change would affect telecommunications providers that are wholesalers and resellers of prepaid calling cards.

72. *International Telecommunications Providers.* We seek comment on eliminating the exemption for international-only providers and limited international revenues exemption (LIRE)-qualifying providers.²⁴² We also seek comment on modifying the LIRE exemption by requiring LIRE-qualifying providers to contribute on at least a portion of its revenues. If adopted, this change would affect international-only telecommunications providers and telecommunications providers who may have previously relied on the LIRE exemption.

73. *Reforming the De Minimis Exemption.* The Commission has authority to exempt a carrier or class of carriers from Fund contribution requirements if their contributions would be *de minimis*. Currently, *de minimis* status is determined on a providers’ annual contribution amount. In the Notice, we seek comment on simplifying the exemption by basing it on a provider’s annual assessable revenues. This should simplify the process by which entities may determine if they qualify for the *de minimis* exception. If adopted, this change would affect *de minimis* telecommunications providers.

74. *Assessing Contributions Based on Connections.* In this Notice, we seek comment on whether we should adopt a contribution system based on connections.²⁴³ Under a connections-based system, providers could be assessed based on the number, speed, or capacity of connections to a communications network provided to customers. Providers would contribute a set amount per connection, regardless of the revenues derived from that connection. We seek comment on whether a connections-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters. If adopted, this change would affect all telecommunications providers.

75. *Assessing Contributions Based on Numbers.* We also seek comment on whether we should adopt a contributions system based on numbers.²⁴⁴ Under a numbers-based system, in its simplest form, providers would be assessed based on their count of North American Numbering Plan telephone numbers. There would be a standard monthly assessment per telephone number, such as \$1 per month, with potentially higher and lower tiers for certain categories of numbers based on how these numbers are

²³⁹ See *supra* Section V.A.4 (Contributions Obligations of Wholesalers and Their Customers), paras 143 – 178.

²⁴⁰ See *supra* Section V.A.5 (Reporting Prepaid Calling Card Revenues), paras. 179 – 192.

²⁴¹ *Id.*; see *supra* Section VI.F (Filer Registration and Deregistration), paras. 381 – 386.

²⁴² See *supra* Section V.A.6 (International Telecommunications Providers), paras. 193 – 208.

²⁴³ See *supra* Section V.B (Assessing Contributions Based on Connections), paras. 219 – 283.

²⁴⁴ See *supra* Section V.C (Assessing Contributions Based on Numbers), paras. 284 – 341.

assigned or used. The monthly assessment per number would be calculated by applying a formula based on the USF demand requirement and the relevant count of numbers, however that term is defined. We seek comment on whether a numbers-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters. If adopted, this change would affect all telecommunications providers.

76. *Assessing Contributions Based on a Hybrid Methodology with a Numbers Component.* In this Notice, we also seek comment on whether we should consider a hybrid approach that combines a telephone numbers component with a connections component.²⁴⁵ Under such an approach, providers could be assessed a flat fee for each assessable NANP telephone number and assessed a fee based on the connection for services not associated with a NANP telephone number. We seek comment on whether a hybrid approach would better meet our proposed goals for reforming the contributions methodology. If adopted, this change would affect all telecommunications providers.

77. *Pass-Through of USF Contributions as a Separate Line Item Charge.* In this Notice, we seek comment on ways to improve the transparency for customers relating to the amount of universal service contribution charges that are being passed through by the providers to their customers. We seek comment on whether to: (1) require greater clarity on customer bills regarding how the USF charge was calculated; (2) require providers to disclose at initiation of service the amount of the quoted rate or assessable units would be USF-assessable; and (3) if we were to adopt either of these rules, apply them to all customers, or limit the rules to mass market customers. We seek comment on whether to prohibit contributors from recovering contribution costs as a separate line item on the customer bill. We also seek comment on whether we should take steps to ensure that contributions are made by contributors that become insolvent, specifically by requiring contributors that recover their contribution obligation from end-users to segregate those end-user payments in dedicated trust accounts for the sole benefit of the USF. Finally, we propose to level the playing field between incumbent LECs and competitive LECs by adopting a rule that would prohibit competitive ETCs from recovering USF contribution costs for their Lifeline offerings from Lifeline subscribers. If adopted, this change would affect competitive telecommunications providers that serve Lifeline customers.

78. *Other Reporting Changes.* We propose requiring all telecommunications providers (as well as telecommunications carriers) to register with the Commission, and propose rules requiring registrants that provide telecommunications to others for resale to check the registration status of their customers.²⁴⁶ We also propose that telecommunications providers file electronically their quarterly and annual Telecommunications Reporting Worksheet, with a fee for those that file by paper.²⁴⁷ We believe these rules will provide reporting entities enhanced certainty regarding their contribution obligations.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

79. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁴⁸

²⁴⁵ See *supra* Section V.C.5 (Use of a Hybrid System with a Numbers-Component), paras. 324 – 326.

²⁴⁶ See *supra* Section VI.F (Filer Registration and Deregistration), paras. 381 – 386.

²⁴⁷ See *supra* Section VI.E (Paper-Filing Fees), paras. 376 – 380.

²⁴⁸ 5 U.S.C. § 603(c)(1)–(c)(4).

80. As indicated in the Notice, we seek to reform the contribution system. We believe our proposed rules will provide reporting entities enhanced certainty regarding their contribution obligations, which is especially important for small businesses that may not have the resources of larger business to comply with complex rules.

81. We believe that adopting a simplified and clearly defined apportionment method will provide greater predictability to all telecommunications providers and customers. The Notice seeks comment on a modified version of the two safe harbors available for apportioning revenues from bundled service offerings.²⁴⁹ We believe that providing a bright line rule for providers reduces the administrative burden for small entities.

82. We seek comment on whether we should modify the contribution methodology to assess “value-added” revenues rather than “end user” revenues. Under this approach, each telecommunications provider in a service value chain (including both wholesalers and resellers) would contribute based on the value in the providers adds to the service. We also seek comment on modifying the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into other services that are not telecommunications services. We believe that either of these approaches would simplify the reporting process for all parties, and provide greater certainty. For each approach, we seek comment on ways to streamline the overall reporting requirements for all parties. In addition, these potential rule changes would increase the Commission’s administration and oversight of the contributions system in the wholesaler–reseller context.

83. We believe that our registration and deregistration proposals for all parties required to file the Telecommunications Reporting Worksheet will help ensure that the Commission’s FCC Form 499-A Filer Database is current and complete.²⁵⁰ One of the purposes of registration is that it allows the Commission to better monitor registered providers for compliance with our rules and regulations. In addition, a filer registration requirement provides transparency to the public, making available important information including the relevant regulatory contact information. We recognize that the proposed registration and deregistration process may impose a small one-time burden on parties that were not previously required to register, but we believe the benefit of having a current and complete database may outweigh the burden.

84. We seek comment on modifying the *de minimis* exemption to base the threshold on assessable revenues rather than the amount of contributions. We believe this will simplify the contributions system and reduce the administrative burden for small entities. We also seek comment on whether this proposal might also reduce the reporting obligations and regulatory uncertainty for *de minimis* telecommunications providers that have growing revenues. Specifically, we seek comment on whether to make it optional for a telecommunications provider to file quarterly Telecommunications Reporting Worksheets for a year after which the provider qualifies as *de minimis*.²⁵¹ We believe these changes might simplify the reporting obligations of small entities and reduces their administrative burden.

85. We seek comment on updating the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) and its instructions.²⁵² Specifically, we seek comment on whether we should modify the process by which these forms are revised by soliciting public comment from interested parties prior to adopting revisions to the forms or the instructions. We believe these changes would provide greater clarity to contributors and simplify compliance and the administration of the contributions process.

²⁴⁹ See *supra* para. 67.

²⁵⁰ See *supra* para. 71 and 78.

²⁵¹ See *supra* para. 73.

²⁵² See *supra* Section VI.A (Updating the Telecommunications Reporting Worksheet), paras. 344 – 349.

86. We note that in past contribution reform proceedings some parties have proposed alternative contribution methodologies based on numbers, connections, or a combination of numbers and connections. To the extent that parties believe that alternative systems would better promote our goals for contribution reform, we seek comment on the benefits of such systems relative to our proposed improved revenues system and ask for specific proposals on how such systems could be implemented.²⁵³

87. The Notice seeks comment from all interested parties. The Commission is aware that some of the proposals or approaches under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals or approaches outlined in the Notice. We invite comment on how these proposals or approaches might be made less burdensome for small entities but still in keeping with our goals for contribution reform. We also invite commenters to discuss the benefits of such changes on small entities and to weigh these benefits against the burdens for telecommunications providers that might also be small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

88. None.

²⁵³ See *supra* para. 74 – 76.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan For Our Future, GN Docket No. 09-51

Over the past several months, a unanimous Commission has taken on two major reforms of Universal Service programs. Last November, we adopted a once-in-a-generation overhaul of universal service support for rural areas.

Today, nearly 18 million Americans can't get broadband. Our creation of an efficient, accountable Connect America Fund will accelerate wired and wireless broadband buildout to these unserved rural homes, connecting these Americans to the massive benefits of high-speed Internet.

We also modernized the Lifeline program for the 21st century, eliminating waste and misuse of public funds, imposing fiscal discipline and accountability, while enabling Lifeline to continue playing a vital role in ensuring that the neediest among us are connected to our communications networks.

At the same time, we also eliminated duplicative and unnecessary funding, ended arbitrage schemes, closed loopholes, and instituted competitive bidding. These reforms will keep billions of dollars in consumers' pockets in the coming years.

Universal service reform is part of a broader agency effort to modernize outdated programs, eliminating unnecessary rules and improving efficiency and effectiveness.

Today, we take the next step in our universal service overhaul – contribution reform.

For years, there have been bipartisan calls to fix this outdated system. I am pleased that today we are formally seeking solutions that will improve the efficiency, fairness, and sustainability of the system.

In our USF Reform Order creating the Connect America Fund and our Lifeline Reform Order, we took major strides to address the total amount Americans contribute to universal service and how universal service support should be allocated. With today's item, we propose bringing the same smart government and regulatory reform principles to the system for how contributions are assessed and collected.

The contribution system we have in place is still largely the same as the one the FCC adopted 15 years ago. Not surprisingly, the system is showing its age and suffers from a number of problems.

The current contribution system imposes significant compliance costs and creates inconsistencies. Responding to a contribution audit can cost upwards of half a million dollars, and some contributors can find themselves on the hook for tens of millions of dollars in unpaid contributions.

The current system creates market distortions. Outdated rules and loopholes mean that services that compete directly against each other may face different treatment. For example, providers of business communications services that are required to contribute may find themselves bidding against providers of very similar services that are not contributing.

And due to massive changes in the marketplace, the system has recently begun to suffer from declines in the revenue of services required to contribute. The contribution base has declined by roughly 10% since 2008.

Today we propose three goals for contribution reform: efficiency, fairness, and sustainability. And we underscore that any reforms to the contribution system must safeguard core Commission objectives, including the promotion of broadband innovation, investment, and adoption. Reforms must also account for business realities, including reasonable transition periods for any changes.

I look forward to working with my fellow Commissioners and with all stakeholders in pursuit of these goals. This is a hard task, and those seeking reform should be concrete on how to do so.

Finally, I thank the staff for once again taking on the Universal Service issues with thoughtfulness and care.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan For Our Future, GN Docket No. 09-51

For several years, I have maintained that contribution reform was a vital cornerstone to any comprehensive effort to modernize the Universal Service Fund (USF). Ideally, I would have preferred that the Commission have tackled both distribution reform and contribution reform in one comprehensive proceeding as we were poised to do in 2008. But, the Commission has opted to break our effort into pieces instead. Last fall, we modernized the distribution or spending side of the USF high cost program. Furthermore, in January we overhauled the Lifeline/Link-up program. Equally important, however, is the need to fix the contribution methodology, or the “taxing” side of the ledger. In other words, who is going to pay for all of this and how? Today, we start to collect an array of ideas to answer these questions.

To put the importance of contribution reform into perspective, the contribution factor, a type of tax paid by telephone consumers, has risen each year from approximately 5.5 percent in 1998 to almost 18 percent in the first quarter of this year. This trend is unacceptable because it is unsustainable. Furthermore, the cryptic language on consumers’ phone bills, combined with the skyrocketing “tax” rate, has produced a new form of “bill shock.” We must tame this wild automatic tax increase as soon as possible.

I am delighted that we are finally picking up where the Commission left off in 2008. I recognize that implementing reform will not be easy. Precisely because today’s notice asks such a broad range of questions, all stakeholders will have an opportunity to find something controversial and undesirable, in their view. Controversy, however, should not deter us from lowering the tax rate while broadening the base according to the authority granted to us by Congress. The current pool of contributors is shrinking. It must be expanded, but we must do so only within our statutory authority while keeping in mind the international implications of our actions. Accordingly, I hope that all commenting parties will also tell us what they *like* about any of the proposed ideas as well as offer us their new ideas.

In years past, I supported the concept of broadening the assessments pool to include a phone numbers based system. Market conditions have changed since then, so I will pay particular attention to fact-based arguments for and against a phone numbers based contribution methodology.

In sum, I may not agree with the potential outcome that could result from some approaches that are discussed in this further notice, but I am encouraged that we are moving forward and asking a wide variety of questions. The data and opinions we start gathering today will help the Commission and all stakeholders illuminate a path that leads to a decision we should make no later than this fall.

Many thanks to the Chairman for his leadership as well as to the bureau staff for their diligence on this further notice. I look forward to working with my colleagues and all stakeholders to craft a pragmatic and fair solution that will put consumers first.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; A National Broadband Plan For Our Future, GN Docket No. 09-51

One of the most consistent calls I have heard from many is for this Commission to complete its reform of the Universal Service Fund by addressing the contributions side of the equation. I agree. While the FCC has attempted to keep up with technological changes and has added new services to the contributions list, there is more work to be done to ensure that the system is both equitable and predictable. This is especially important because as we all know it is consumers who ultimately pay for the Fund.

I support the objectives we seek comment on today—namely to improve this system’s administrative efficiency, fairness, and sustainability. Whatever path we ultimately take on reforming contributions, it should reflect our goals for the Fund—to promote the availability and adoption of affordable broadband and voice services for all Americans. I want to thank the staff for putting together a thorough Further Notice, the Chairman for his leadership on this matter, and for Commissioner McDowell who has worked diligently to ensure that we take this matter up for Commission action. I look forward to working with all interested parties to complete this proceeding in a timely fashion.

